

Exhibit A  
to  
Modification of 1994 Consent Decree Affecting Operable Unit 9



ENTERED  
08/23/2007

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

In re:	§	Case No. 05-21207
	§	
ASARCO LLC, <i>et al.</i> ,	§	Chapter 11
	§	
Debtors.	§	Jointly Administered
	§	

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**ORDER APPROVING COMPROMISE AND SETTLEMENT  
OF FUTURE RESPONSE COSTS AND FUTURE LIABILITIES AT  
OPERABLE UNIT 9 OF THE CALIFORNIA GULCH SUPERFUND SITE**

Upon consideration of the Motion Approving Compromise and Settlement of Future Response Costs and Future Liabilities at Operable Unit 9 of the California Gulch Superfund Site (the "Motion"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided as set forth in the Motion, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore, it is

**ORDERED** that the compromise and settlement among ASARCO, LLC ("ASARCO"), the United States of America and the Colorado Department of Public Health and the Environment, as described in greater detail in the Motion, is approved; and it is further

**ORDERED** that ASARCO is authorized to enter into and implement the settlements; and it is further

**ORDERED** that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: August 23, 2007

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**RICHARD S. SCHMIDT**  
**UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

In re:	)	
	)	
ASARCO LLC, et al.	)	Case No. 05-21207
	)	Chapter 11
<u>Debtors.</u>	)	

**SETTLEMENT AGREEMENT REGARDING OPERABLE UNIT 9 OF THE  
CALIFORNIA GULCH SUPERFUND SITE**

WHEREAS, on or about June 27, 2001, ASARCO, LLC, formerly known as ASARCO Incorporated, ("ASARCO" or the "Debtor") entered into the Lake County Community Health Program Trust Agreement ("Trust Agreement") with the United States Environmental Protection Agency ("EPA"), the Colorado Department of Public Health and Environment ("CDPHE"), Lake County, Colorado, and Wells Fargo Bank West, N.A. ("Trustee"), a true and correct copy of which is attached hereto as Attachment A;

WHEREAS, the Trust Agreement was entered into in accordance with a Consent Decree settling certain consolidated actions entitled "State of Colorado v. ASARCO Incorporated, et al. v. Leadville Corporation et al.," Civil Action No. 83-C-2388, and "United States of America v. Apache Energy and Minerals et al.," Civil Action No. 86-C-1675, in the United States District Court for the District of Colorado ("Consent Decree");

WHEREAS, the Trust Agreement establishes a trust fund to finance implementation of the Lake County Community Health Program ("LCCHP") which

addresses the risk of children in residential areas of Leadville being exposed to lead including the Lead Risk Reduction Program;

**WHEREAS**, the LCCHP is part of a remedial action selected by EPA in the Record of Decision for Operable Unit 9 (Residential Populated Areas) for the California Gulch Superfund Site on September 2, 1999, to address lead contamination at the Site under the Comprehensive Environmental Response, Liability and Compensation Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), from the Debtor's mining operations;

**WHEREAS**, under the Consent Decree, ASARCO funded a trust account in the amount of \$8.6 million to cover the cost of the LCCHP in accordance with the Trust Agreement;

**WHEREAS**, the EPA, CDPHE, and Lake County, Colorado are the named beneficiaries with specific rights under the Trust Agreement;

**WHEREAS**, the Trust Agreement provides for ASARCO to each year submit a written budget for the approval of EPA for the response actions to be completed by ASARCO as part of the LCCHP, including soil, dust, and paint remediation at residential properties, and monitoring the blood lead levels of children in the community. Once the final budget is approved by EPA, the Trustee disburses trust funds to ASARCO to be used to finance implementation of the LCCHP for that year;

**WHEREAS**, the Trust Agreement obligates ASARCO to provide an annual accounting of the actual income realized and expenditures incurred with respect to any trust monies disbursed to ASARCO;

**WHEREAS**, the Trust Agreement provides that no share or interest of the trust is an asset in any bankruptcy of ASARCO under any circumstances;

**WHEREAS**, prior to its bankruptcy filing, on or about May 24, 2005, ASARCO proposed a budget of \$1,003,630.00 for implementation of the LCCHP, for the period from May 2005 through April 2006, which EPA approved. on or about June 21, 2005, in the amount of \$963,639.00;

**WHEREAS**, on or about June 23, 2005, the Trustee disbursed \$963,639 to ASARCO pursuant to the terms of the Trust Agreement to be used to implement the LCCHP;

**WHEREAS**, ASARCO specifically segregated these trust monies in two Wells Fargo bank accounts Account Number 12831822 (the "LCCHP Investment Account") and Account Number 412-8683752 (the "LCCHP Checking Account") for the implementation of the LCCHP (collectively the "LCCHP Accounts");

**WHEREAS**, as of the date of ASARCO's bankruptcy filing, approximately \$868,000 of this amount was retained by ASARCO;

**WHEREAS**, ASARCO filed with the United States Bankruptcy Court for the Southern District of Texas a voluntary petition for relief under Title 11 of the United States Code (the "Bankruptcy Code") on August 9, 2005;

**WHEREAS**, at the time of its bankruptcy filing, ASARCO continued to hold the LCCHP Accounts;

**WHEREAS**, as of March 31, 2007, the LCCHP Investment Account totaled \$904,150.72, including accrued interest, and the LCCHP Checking Account totaled \$150,524.99, including accrued interest;

**WHEREAS**, on or about August 1, 2006, the United States filed its Supplemental Proof of Claim, which asserted, inter alia, that the LCCHP Accounts were subject to a constructive or equitable or other form of trust and asserted a secured claim to such proceeds;

**WHEREAS**, on or about July 26, 2006, CDPHE filed a Proof of Claim, which asserted, inter alia, that the LCCHP Accounts were not property of the bankruptcy estate or are subject to a constructive trust, a resulting trust, an express trust by implication, or other form of trust under Colorado law and asserted a secured claim to such proceeds;

**WHEREAS**, the parties hereto desire to settle, compromise, and resolve their disputes concerning the LCCHP Accounts so that these funds may be used to implement the LCCHP;

**WHEREAS**, in consideration of, and in exchange for, the promises and covenants herein, the parties hereby agree to the terms and provisions of this Settlement Agreement ("Settlement Agreement"); and

**WHEREAS**, this Settlement Agreement is in the public interest and is an appropriate means of resolving this matter.

**NOW, THEREFORE**, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties by their attorneys and authorized officials, it is hereby agreed as follows:

#### **I. JURISDICTION**

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

**II. PARTIES BOUND; SUCCESSION AND ASSIGNMENT**

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the parties hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Case.

**III. PAYMENT OF FUNDS**

3. Within 30 days of the District Court approval of appropriate modifications of the Consent Decree, the Debtor shall pay all the funds in the LCCHP Accounts, including all accrued interest therein, to EPA which shall place the funds in a Special Account for performance of the LCCHP.

4. Debtor shall make the payment required by Paragraph 3 by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing, EPA Site/Spill ID Number 082909. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Colorado.

At the time of payment, Respondent shall send notice that payment has been made by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), to

Dana Anderson, NWD  
EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268,

and by email to [walker.martha@epa.gov](mailto:walker.martha@epa.gov), to:

Martha Walker, FMO  
Financial Management Program  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466



The total amounts to be paid by Debtor pursuant to this Settlement Agreement shall be deposited by EPA in the California Gulch Superfund Site OU 9 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with Operable Unit 9 at the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

5. When requested by EPA and CDPHE, Debtor shall consent to amendment of the Trust Agreement deleting all references to the Debtor under the terms of the Trust Agreement in order to remove the Debtor from any role in the implementation of the LCCHP and the disbursement or use of the Trust monies, as well as participating in any future amendments to the Trust Agreement, so long as such amendments create no obligations for the Debtor beyond the obligations presently set out in the Trust Agreement. Debtor agrees to perform in a timely manner any actions required to finalize amendments to the Trust Agreement.

6. The United States, CDPHE, and Debtor shall seek appropriate modifications to the Consent Decree to make it consistent with this Settlement Agreement. Any proposed modifications shall be subject to the objections of non-parties to this Settlement Agreement and approval of the District Court.

#### **IV. COVENANTS NOT TO SUE**

7. Except as specifically provided in Paragraph 8 (Reservation of Rights), EPA and CDPHE covenant not to sue or assert any claims or causes of action pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with respect to Operable Unit 9 of the California Gulch Superfund Site. This Settlement Agreement shall serve as settlement for all existing EPA

and CDPHE claims for future response costs and future liability for Operable Unit 9 contingent upon the Debtor's payment of the funds outlined in Paragraphs 3. This Settlement Agreement does not pertain to the Debtor's liability for any Past Response Costs for Operable Unit 9 of the California Gulch Superfund Site, which costs were incurred prior to the last date of signing of this Settlement Agreement by the parties.

#### **V. RESERVATION OF RIGHTS**

8. The covenants not to sue set forth in Paragraph 7 do not pertain to any matters other than those expressly specified therein. EPA and CDPHE reserve, and this Settlement Agreement is without prejudice to, all rights against the Debtor or other person with respect to all other matters, including but not limited to: (1) any action to enforce the terms of this Settlement Agreement and (2) any action for Past Response Costs.

9. Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States and State of Colorado with respect to Operable Unit 9 of the California Gulch Superfund Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims against the United States and the State of Colorado, its departments, agencies or instrumentalities, and any claims arising out of response activities at Operable Unit 9 of the California Gulch Superfund Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d). For example, Debtor reserves its rights to object to claims for past response costs relating to this Operable Unit.

10. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

**VI. JUDICIAL APPROVAL**

11. The settlement reflected in this Settlement Agreement shall be subject to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019. The Debtor shall move promptly for Bankruptcy Court approval of this Settlement Agreement and shall exercise commercially reasonable efforts to obtain such approval.

**VII. EFFECTIVE DATE**

12. The Effective Date of this Settlement Agreement shall be the date upon which it is approved by the Bankruptcy Court.

**VIII. SIGNATORIES/SERVICE**

13. The signatories for the parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

**FOR THE UNITED STATES:**

Date: July 18, 2007

By: \_\_\_\_\_

Ronald J. Tenpas  
Acting Assistant Attorney General  
Environment and Natural  
Resources Division  
U.S. Department of Justice

Date: July 18, 2007

By: \_\_\_\_\_

Alan S. Tenenbaum  
David L. Dain  
Jerel ("Jerry") L. Ellington  
Mark C. Elmer  
Environment and Natural  
Resources Division  
Environmental Enforcement  
Section  
U.S. Department of Justice

Date: July 18, 2007

By: \_\_\_\_\_

Carol Rushin  
Assistant Regional Administrator  
Office of Ecosystems Protection &  
Remediation  
U.S. EPA, Region 8

Date: July 18, 2007

By: \_\_\_\_\_

Michael T. Risner  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice  
U.S. EPA, Region 8

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND THE  
ENVIRONMEMNT:**

Date: July 18, 2007

By: \_\_\_\_\_

James Martin  
Executive Director

**FOR ASARCO:**

Date: 11/09/2007

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Thomas L. Aldrich  
Vice President, Environmental Affairs

Date: 11/09/2007

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Douglas E. McAllister  
Executive Vice President,  
General Counsel